

§ 1.1016-3T

(3) *Application of § 1.1016-3T(a)(1)(ii).* [Reserved] For further guidance, see § 1.1016-3T(j)(3).

[T.D. 6500, 25 FR 11910, Nov. 26, 1960; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 9105, 69 FR 12, Jan. 2, 2004; T.D. 9307, Dec. 28, 2006; T.D. 9564, 76 FR 81126, Dec. 27, 2011]

§ 1.1016-3T Exhaustion, wear and tear, obsolescence, amortization, and depletion for periods since February 13, 1913 (temporary).

(a)(1)(i) [Reserved] For further guidance, see § 1.1016-3(a)(1)(i).

(a)(1)(ii) The determination of the amount properly allowable for exhaustion, wear and tear, obsolescence, amortization, and depletion must be made on the basis of facts reasonably known to exist at the end of the taxable year. A taxpayer is not permitted to take advantage in a later year of the taxpayer's prior failure to take any such allowance or the taxpayer's taking an allowance plainly inadequate under the known facts in prior years. In the case of depreciation, if in prior years the taxpayer has consistently taken proper deductions under one method, the amount allowable for such prior years must not be increased even though a greater amount would have been allowable under another proper method. For rules governing losses on retirement or disposition of depreciable property, including rules for determining basis, see § 1.167(a)-8T, § 1.168(i)-1T, or § 1.168(i)-8T, as applicable. The application of this paragraph is illustrated by the following example:

Example. On July 1, 2011, A, a calendar-year taxpayer, purchased and placed in service "off-the-shelf" computer software at a cost of \$36,000. This computer software is not an amortizable section 197 intangible. Pursuant to section 167(f)(1), the useful life of the computer software is 36 months. It has no salvage value. For 2011, A elected not to deduct the additional first year depreciation deduction provided by section 168(k). A did not deduct any depreciation for the computer software for 2011 and deducted depreciation of \$12,000 for the computer software for 2012. As a result, the total amount of depreciation allowed for the computer software as of December 31, 2012, was \$12,000. However, the total amount of depreciation allowable for the computer software as of December 31, 2012, is \$18,000 (\$6,000 for 2011 + \$12,000 for 2012). As a result, the unrecovered cost of the computer software as of December 31, 2012, is

26 CFR Ch. I (4-1-12 Edition)

\$18,000 (cost of \$36,000 less the depreciation allowable of \$18,000 as of December 31, 2012). Accordingly, depreciation for 2013 for the computer software is \$12,000 (unrecovered cost of \$18,000 divided by the remaining useful life of 18 months as of January 1, 2013, multiplied by 12 full months in 2013).

(a)(2) through (i) [Reserved] For further guidance, see § 1.1016-3(a)(2) through (i).

(j)(1) *In general.* Except as provided in paragraphs (j)(2) and (j)(3) of this section, this section applies on or after December 30, 2003. For the applicability of regulations before December 30, 2003, see § 1.1016-3 in effect prior to December 30, 2003 (§ 1.1016-3 as contained in 26 CFR part 1 edition revised as of April 1, 2003).

(2) [Reserved] For further guidance, see § 1.1016-3(j)(2).

(3) *Application of § 1.1016-3T(a)(1)(ii).* Paragraph (a)(1)(ii) of this section applies to taxable years beginning on or after January 1, 2012. For the applicability of § 1.1016-3(a)(1)(ii) to taxable years beginning before January 1, 2012, see § 1.1016-3(a)(1)(ii) in effect prior to January 1, 2012 (§ 1.1016-3(a)(1)(ii) as contained in 26 CFR part 1 edition revised as of April 1, 2011).

(4) *Expiration date.* The applicability of this section expires on December 23, 2014.

[T.D. 9564, 76 FR 81126, Dec. 27, 2011, as amended by T.D. 9564, 77 FR 18688, Mar. 28, 2012]

§ 1.1016-4 Exhaustion, wear and tear, obsolescence, amortization, and depletion; periods during which income was not subject to tax.

(a) Adjustments to basis must be made for exhaustion, wear and tear, obsolescence, amortization, and depletion to the extent actually sustained in respect of:

(1) Any period before March 1, 1913.

(2) Any period since February 28, 1913, during which the property was held by a person or organization not subject to income taxation under chapter 1 of the Code or prior income tax laws.

(3) Any period since February 28, 1913, and before January 1, 1958, during which the property was held by a person subject to tax under part I, subchapter L, chapter 1 of the Code, or prior income tax law, to the extent

that section 1016(a)(2) does not apply, and

(4) Any period since February 28, 1913, during which such property was held by a person subject to tax under part II of subchapter L, chapter 1 of the Code, or prior income tax law, to the extent that section 1016(a)(2) does not apply.

(b) The amount of the adjustments described in paragraph (a) of this section actually sustained is that amount charged off on the books of the taxpayer where such amount is considered by the Commissioner to be reasonable. Otherwise, the amount actually sustained will be the amount that would have been allowable as a deduction:

(1) During the period described in paragraph (a) (1) or (2) of this section, had the taxpayer been subject to income tax during those periods, or

(2) During the period described in paragraph (a) (3) or (4) of this section, with respect to property held by a taxpayer described in that paragraph, to the extent that section 1016(a)(2) was inapplicable to such property during that period.

In the case of a taxpayer subject to the adjustment required by subparagraph (1) or (2) of this paragraph, depreciation shall be determined by using the straight line method.

[T.D. 6681, 28 FR 11131, Oct. 17, 1963]

§ 1.1016-5 Miscellaneous adjustments to basis.

(a) *Certain stock distributions.* (1) In the case of stock, the cost or other basis must be diminished by the amount of distributions previously made which, under the law applicable to the year in which the distribution was made, either were tax free or were applicable in reduction of basis (not including distributions made by a corporation which was classified as a personal service corporation under the provisions of the Revenue Act of 1918 (40 Stat. 1057) or the Revenue Act of 1921 (42 Stat. 227), out of its earnings or profits which were taxable in accordance with the provisions of section 218 of the Revenue Act of 1918 or the Revenue Act of 1921). For adjustments to basis in the case of certain corporate distributions, see section 301 and the regulations thereunder.

(2) The application of subparagraph (1) of this paragraph may be illustrated by the following example:

Example: A, who makes his returns upon the calendar year basis, purchased stock in 1923 for \$5,000. He received in 1924 a distribution of \$2,000 paid out of earnings and profits of the corporation accumulated before March 1, 1913. The adjusted basis for determining the gain or loss from the sale or other disposition of the stock in 1954 is \$5,000 less \$2,000, or \$3,000, and the amount of the gain or loss from the sale or other disposition of the stock is the difference between \$3,000 and the amount realized from the sale or other disposition.

(b) *Amortizable bond premium—(1) In general.* A holder's basis in a bond is reduced by the amount of bond premium used to offset qualified stated interest income under § 1.171-2. This reduction occurs when the holder takes the qualified stated interest into account under the holder's regular method of accounting.

(2) *Special rules for taxable bonds.* A holder's basis in a taxable bond is reduced by the amount of bond premium allowed as a deduction under § 1.171-3(c)(5)(ii) (relating to the issuer's call of a taxable bond) or under § 1.171-2(a)(4)(i)(A) (relating to excess bond premium).

(3) *Special rule for tax-exempt obligations.* A holder's basis in a tax-exempt obligation is reduced by the amount of excess bond premium that is treated as a nondeductible loss under § 1.171-2(a)(4)(ii).

(c) *Municipal bonds.* In the case of a municipal bond (as defined in section 75(b)), basis shall be adjusted to the extent provided in section 75 or as provided in section 22(o) of the Internal Revenue Code of 1939, and the regulations thereunder.

(d) *Sale or exchange of residence.* Where the acquisition of a new residence results in the nonrecognition of any part of the gain on the sale, or exchange, or involuntary conversion of the old residence, the basis of the new residence shall be reduced by the amount of the gain not so recognized pursuant to section 1034(a), or section 112(n) of the Internal Revenue Code of 1939, and the regulations thereunder. See section 1034(e) and the regulations thereunder.